

COMPLAINT 2008 – NO. 4

In Re Goodman

STIPULATION AND ORDER

September, 2008

I. Nature of the Complaint

The complaint alleges that Representative Roger Goodman (Respondent) violated the Ethics in Public Service Act by placing or posting legislative press releases on his campaign Web site. RCW 42.52.180 prohibits the use of the facilities of an agency (public resources) to assist a campaign. This statute defines facilities of an agency as follows:

(1)...Facilities of an agency include, but are not limited to, use of stationery, postage, machines and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of an agency, and clientele lists of persons served by the agency.

The Board has both personal and subject-matter jurisdiction.

II. Conclusion

The posting of these documents on the Respondent's campaign Web site is a violation of RCW 42.52.180.

III. Determinations of Fact

1. The Respondent is a candidate for reelection to the House of Representatives from the 45th Legislative District.
2. Respondent's campaign Web site, at the time the complaint was filed on August 11, 2008, contained five legislative press releases prepared with the use of the facilities of the House of Representatives. These documents included the Respondent's legislative telephone number, legislative staff contacts and legislative e-mail addresses followed by the statement "Paid for by Friends of Roger Goodman." The documents are dated from December 22, 2007 to March 12, 2008 and discuss legislation prime-sponsored by the Respondent in addition to his appointments to a legislative committee and a state advisory council.
3. The press releases were placed or posted on the campaign Web site by the Respondent or at his direction. There are no facts to indicate that legislative staff identified in the releases as points of contact for further information were involved in the posting of the documents to the campaign Web site.

4. A review of the campaign Web site undertaken on the day the complaint was received revealed no other legislative documents, e-mail addresses, phone numbers or staff contacts.
5. Respondent removed the press releases from the campaign Web site when notified of the complaint.

VI. Determinations of Law

A legislator's use of legislative press releases, prepared with the facilities of the House of Representatives or of the Senate, through the posting of those releases on a legislator's campaign Web site constitutes a use of the facilities of an agency (public resources) in support of his or her campaign in violation of RCW 42.52.180 (Advisory Opinion 2004 – No. 1; Complaint Opinion 2006 – No. 5; and Complaint Opinion 2006 – No. 7).

VII. Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Respondent has violated RCW 42.52.180 and shall be penalized by a Letter of Instruction and this Order shall serve as the Letter of Instruction.

Wayne Ehlers, Chair

Date:

I, Roger Goodman, have had the option of reviewing this Stipulation and Order with legal counsel or have actually reviewed it with legal counsel and understand its legal significance. I acknowledge that I posted five of my legislative press releases as described in the Determinations of Fact on my campaign Web site. I voluntarily sign this Stipulation and Order to effectuate a resolution of this matter.

Roger Goodman

Date:

Representative Jamie Pedersen dissents and submits the following statement.

I think the Board properly applies its existing precedent to this case, but write separately to express my view that the Board's precedents on this issue (i.e. Complaint 2006 – No. 5, In Re Nixon and Complaint 2006 – No. 7, In Re Schmidt) are incorrectly decided.

There is no suggestion that Representatives Goodman or Nixon or Senator Schmidt used state facilities in the first place for any purpose but the proper purpose of keeping the public informed of their respective legislative activities. All of my fellow Board members appear to agree that the original preparation of the press releases at issue was not a violation of RCW 42.52.180.

Once prepared, press releases drafted for legislators are public records under the Public Records Act and should be broadly available to the general public, even (or especially) in the context of campaigns. There is no question that a member of the public who made a public records request for those press releases would be entitled to receive a copy of the releases and the state would expend resources in the form of staff time to make those available. Here a legislator's campaign, at its expense and no additional expense to the state, proposes to make public records more broadly available to the voters to help them make an informed decision at the next election. In my view, that activity is not a violation of RCW 42.52.180. It is the campaign's website, and not state facilities, that is making the public records available for the public.

The Board has concluded in previous opinions that non-discretionary documents, such as legislative bill reports and bills sponsored by Representative Goodman, may remain on legislative sites during the election cycle and that legislator's campaign sites may contain a single link to a legislative site containing that information. I find no basis for distinguishing a bill or a bill report from a press release in RCW 42.52.180

For these reasons, I respectfully dissent from the Board's decision in this case.